Before the
Federal Communications Commission
Washington, D.C., 20554

In the Matters of	)	
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Telcordia Technologies, Inc. Petition to Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability Administration	))))	WC Docket No. 07-149
	)	
Petition of Telcordia Technologies, Inc. to Reform or Strike Amendment 70, to Institute Competitive Bidding for Number Portability Administration, and to End the NAPM LLC's Interim Role in Number Portability Administration Contract Management	))))))	WC Docket No. 09-109
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	

REQUEST OF TELCORDIA TECHNOLOGIES, INC. D/B/A ICONECTIV TO APPROVE MODIFICATIONS TO THE LOCAL NUMBER PORTABILITY ADMINISTRATOR CODE OF CONDUCT AND THE ERICSSON VOTING TRUST, AND, IF NECESSARY, THE MINORITY INVESTMENT BY FP ICON HOLDINGS, L.P.

March 31, 2017

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Telcordia Technologies, Inc. d/b/a iconectiv ("iconectiv"), together with FP-Icon Holdings, L.P. ("FP Investors"), hereby request that the Federal Communications Commission ("Commission") approve certain proposed modifications ("Modifications") described below to the Local Number Portability Administrator ("LNPA") Code of Conduct ("Code of Conduct"), and to the trust ("Voting Trust") established to hold the voting stock in iconectiv currently owned by iconectiv's single shareholder, Ericsson Holdings II, Inc., a wholly-owned subsidiary of Telefonaktiebolaget LM Ericsson (collectively "Ericsson"). The Code of Conduct and the Voting Trust were established in connection with iconectiv's selection as the next LNPA in order to ensure that Ericsson would not be able to exert undue influence on iconectiv in favor of any telecommunications service provider ("TSP") as iconectiv carries out its LNPA duties. The requested Modifications are to be made in connection with an investment in iconectiv by FP Investors, a limited partnership formed and ultimately controlled by Francisco Partners Management L.P. ("Francisco Partners") that, if approved and upon closing, will result in FP Investors owning an approximately 16.7 percent equity interest in iconectiv and being represented on iconectiv's Board of Directors. To the extent that the Commission must also consent to FP Investors participating in the control of iconectiv, iconectiv and FP Investors hereby request such consent.[1]

SUMMARY

The Commission should approve the proposed Modifications and, if necessary, FP Investors' minority investment. The transaction strengthens iconectiv's neutrality and impartiality in carrying out its duties as the LNPA. Upon the close of the proposed transaction, iconectiv will be owned by two significant shareholders, Ericsson and FP Investors. This change will mean that the iconectiv Board of Directors, including its independent directors, will owe fiduciary duties to both shareholders, in addition to the fiduciary duties owing to the corporation itself. To the extent there was any legitimate dispute about whether Delaware corporate law would have permitted Ericsson to direct iconectiv's Board to act contrary to iconectiv's neutrality obligations under the Code of Conduct (which iconectiv maintains there was not), that question will be moot upon closing of the proposed transaction, because the presence of FP Investors as a minority shareholder will prevent iconectiv from taking any action that would be harmful to iconectiv and thus to FP Investors.

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[1] All changes to the Voting Trust and Code of Conduct require Commission approval.

At the same time, the proposed transaction will enhance iconectiv's neutrality because FP Investors themselves are neutral. FP Investors and their affiliates have no investments at or above 10 percent equity in any TSP, and FP Investors will not be subject to undue influence by any party with an interest in the outcome of local number portability administration and activities.

The proposed Modifications extend the safeguards embodied in the Voting Trust and Code of Conduct—which were drafted based on the premise that iconectiv would be 100 percent owned by Ericsson—to a situation in which a minority shareholder now has a vested interest and Board representation. Those safeguards were adopted to protect against postulated partiality on the part of Ericsson.[2] They remain in place, and will now be strengthened by an active, neutral minority shareholder who is independent of Ericsson. FP Investors also agree to abide by the Code of Conduct insofar as it is relevant to FP Investors' role as a minority shareholder with Board representation. The proposed Modifications thus maintain the firewalls adopted by the Commission in 2015 and 2016 to prevent any postulated undue influence by Ericsson, including retaining the Voting Trust for all of Ericsson's shares, while enabling a commercially negotiated rights structure for the FP Investors. As today, Ericsson will not be able to control the Board, and the three independent directors will remain, with the majority of directors being independent of Ericsson. The Voting Trust is also maintained, with modifications to align with FP Investors' minority investor rights and protections.

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[2] As explained in other filings, iconectiv does not believe that Ericsson has any incentive to exercise undue influence in favor of individual TSPs. *See, e.g.*, Letter from John T. Nakahata et al. to Marlene H. Dortch, FCC, *Telephone Number Portability, et al.*, CC Docket No. 95-116, WC Docket Nos. 07-149 & 09-109 (Mar. 17, 2015). In addition, the Number Portability Administration Center's highly automated operation makes discrimination highly unlikely.

Because the investment by FP Investors will strengthen neutrality safeguards and bring public interest benefits of management expertise, the Commission should approve the proposed Modifications and, if necessary, FP Investors' minority investment.

I. DESCRIPTION OF THE PARTIES

A. Telcordia d/b/a iconectiv

iconectiv will serve as the LNPA upon the completion of the transition from Neustar, Inc. ("Neustar").[3] In March 2015, the Commission approved a recommendation by the North American Numbering Council, an advisory committee to the Commission, that iconectiv serve as the next LNPA.[4] In July 2016, the Commission issued its final decision approving a contract between iconectiv and North American Portability Management, LLC ("NAPM") that, among other things, contained terms and conditions ensuring iconectiv's neutrality and impartiality and satisfying the requirements set out in the Commission's rules and in the *LNPA Selection Order*.[5] iconectiv and NAPM executed the seven regional Master Services Agreements ("MSAs") on

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3 *See Telcordia Technologies, Inc. Petition to Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability Administration* et al., Order, FCC 16-92, 31 FCC Rcd 8406, 8407 ¶ 1 (2016) ("*LNPA Approval Order*").

4 *See Telcordia Technologies, Inc. Petition to Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability Administration* et al., Order, FCC 15-35, 30 FCC Rcd 3082, 3083 ¶ 1 (2015) ("*LNPA Selection Order*"); *see also* Letter from Hon. Betty A. Kane, Chairman, North American Numbering Council, to Julie A. Veach, Chief, Wireline Competition Bureau, FCC, WC Docket No. 09-109, CC Docket No. 95-116 (filed Apr. 25, 2014).

5 *See LNPA Approval Order* ¶¶ 1-2.

August 8, 2016. iconectiv is in the process of transitioning the LNPA responsibilities from Neustar.

iconectiv is currently a wholly owned indirect subsidiary of Ericsson. Pursuant to the *LNPA Approval Order*, iconectiv adopted the Code of Conduct, and Ericsson transferred 100 percent of its voting stock in iconectiv to the Voting Trust.[6]

B. FP Investors

FP Investors is a limited partnership organized under the laws of the Cayman Islands, formed by Francisco Partners solely to invest in iconectiv. FP Investors, through several intermediary entities, ultimately is controlled by Francisco Partners, a Delaware limited partnership, and its affiliates.[7] Francisco Partners is a leading private equity company, based in San Francisco, California, that makes strategic investments in companies across multiple technology sectors and brings strategic and operational expertise to the companies in which it invests. Since its founding, Francisco Partners has raised over $10 billion to finance investments in 87 portfolio companies. Francisco Partners does not, directly or indirectly, own 10 percent or greater of any TSP as that term is defined in the Commission's rules.[8] The individual managers of Francisco Partners who would be actively involved in managing the iconectiv investment are all citizens of the United States.

FP Investors' limited partners are all insulated from the management of FP Investors' operations in the manner described in the Commission's rules.[9] As a result, these limited

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6 *See id.* ¶¶ 23-31, Appx. A-B.

7 Francisco Partners controls FP Investors through its general partnership in Francisco Partners GP IV, L.P., a Cayman Islands limited partnership, which in turn is the general partner of FP Investors.

8 *See* 47 C.F.R. § 52.5(j).

9 *See* 47 C.F.R. § 1.993.

partners, none of which will hold, directly or indirectly, a 10 percent or greater interest in iconectiv, cannot be actively involved in the management of iconectiv.

A chart showing the post-closing ownership structure of iconectiv, including the Francisco Partners entities in its ownership structure, is attached as Exhibit 1.

II. DESCRIPTION OF THE TRANSACTION AND PROPOSED MODIFICATIONS

Pursuant to their agreement, FP Investors will purchase newly issued shares of preferred stock from iconectiv, and Ericsson will beneficially own 1,000 shares of iconectiv common stock. Common Stock and Preferred Stock will vote as a single class in any matter submitted to stockholders for a vote, and each share of common stock has one vote, and each share of preferred stock has one vote. Thus, at close, FP Investors will own approximately 16.7 percent of the economic interest and shareholder vote in iconectiv.

FP Investors will also have the right to designate two directors out of a total of seven to iconectiv's Board. After close, the iconectiv Board will be composed of the two FP Investors designees, one Ericsson designee, the iconectiv Chief Executive Officer, and three independent directors, with independence defined in accordance with the Code of Conduct and Section 303A.02 of the Rules of the New York Stock Exchange.[10] The independent directors will be designated by Ericsson and the then-serving independent directors, and must be reasonably acceptable to FP Investors.[11] The appointment of all of iconectiv's directors, including the two directors designated by FP Investors, remains subject to those individuals' meeting the neutrality

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[10] Stockholders Agreement § 5.3, attached as Exhibit 2.

[11] Stockholders Agreement § 5.3.

and impartiality conditions applicable to iconectiv directors as set out in the Code of Conduct.[12] Similarly, all Directors will be subject to neutrality review by the Voting Trustees.[13]

In addition, as investors in a closely held company, FP Investors and Ericsson will have certain customary consent rights over major corporate decisions that are unrelated to iconectiv's performance as the neutral LNPA.[14]

Implementing these governance changes requires amendments to the agreement creating the Voting Trust and to the Code of Conduct, both of which were predicated on Ericsson being the sole shareholder of iconectiv.[15] The proposed substantive amendments to the Voting Trust are two-fold. First, the trustees of the Voting Trust will vote Ericsson's shares in iconectiv in a manner consistent with the agreed-upon board structure described above, subject in all cases to the neutrality and impartiality conditions in the *LNPA Selection Order*. Second, the Voting Trust agreement will be amended to state that the trustees will vote at the direction of Ericsson with

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12 *See LPNA Selection Order* Appx. B.

13 *See* Stockholders Agreement § 5.9; Amended and Restated Voting Trust § 1.2, attached as Exhibit 3. A redlined version of the proposed Amended and Restated Voting Trust as compared to the existing Voting Trust is attached as Exhibit 4.

14 These include, subject to certain thresholds, the right to consent to mergers, acquisitions, or asset sales, issuing or selling stocks or options, asset sales or dispositions, dissolution, liquidation or other winding up of the Company or its subsidiaries, incurrence of debt, splitting, combining, reclassifying or otherwise adjusting stock, entering new lines of business, forming certain types of subsidiaries, payments of dividends, material changes to accounting principles, adopting or approving certain long-term incentive plans, approving non-compensatory agreements between iconectiv and any stockholder, and any amendment to the certificate of incorporation or bylaws. *See* Stockholder Agreement § 5.5.

15 *See LNPA Selection Order* ¶¶ 181-188.

respect to certain corporate actions not affecting neutrality and requiring Ericsson's and FP Investors' consent.[16]

There are also two proposed substantive amendments to the Code of Conduct.[17] First, they extend to FP Investors the prohibition against sharing "confidential information about iconectiv's LNPA business services or operations with employees of any TSP (except as necessary for the performance of iconectiv's LNPA duties)."[18] Second, the revised Code of Conduct restates the requirements in a manner to preserve protections against Ericsson dominating the iconectiv Board, while enabling the inclusion of Board members who represent FP Investors as a new minority shareholder. As amended, the Code of Conduct will require that iconectiv's Board consist of a majority directors who are independent of Ericsson—which will be amply satisfied by the three independent directors and the two FP Investors directors—but will also ensure that a plurality of directors are likewise independent of iconectiv, Ericsson, and FP Investors.[19]

Finally, at the earlier of completion of the LNPA transition (i.e., the Final Acceptance Date under the NAPM-iconectiv MSAs) or December 31, 2018, FP Investors' designated directors' will have special voting rights ("Special Voting Rights") with respect to the following matters:

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16 The proposed amendments to the Voting Trust agreement also include a technical clarification that the "issuance" of new shares of iconectiv stock includes the splitting, combining, or reclassifying of existing shares; as well as a conforming edit to the recitals acknowledging that Ericsson will be, post-investment, the owner of a majority of the stock, rather than all of the stock, in iconectiv.

17 A redlined version of the proposed Amended and Restated Code of Conduct as compared to the existing Code of Conduct is attached as Exhibit 5.

18 Amended and Restated Code of Conduct § 3, attached as Exhibit 6.

19 *See* Amended and Restated Code of Conduct § 7.a, with a conforming change to § 7.d.

- Employment or termination of services of any executive officers of iconectiv;
- The adoption or amendment of iconectiv's annual budget (including for its subsidiaries);
- The incurrence of indebtedness for borrowed money,[20] the issuance of debt securities, or the assumption, guarantee or endorsement of obligations of any other person; and
- The declaration or payment of any dividends or distributions on any iconectiv stock.[21]

At that time, with respect to these enumerated matters, the FP Investors' designated directors collectively will be "deemed to have a number of votes equal to the votes held by all Directors (other than the [FP Investors'] Directors) plus one."[22]

III. FP INVESTORS WILL BE A NEUTRAL, SKILLED MINORITY SHAREHOLDER

FP Investors' investment brings tremendous public interest benefits and does not pose any neutrality concerns. Francisco Partners does not own more than 10% in any TSP, and its broad investments do not present any potential concerns regarding undue influence. Thus, FP Investors is itself a neutral party with regard to the outcome of numbering administration activities, and has entered into representations and warranties ensuring its neutrality as part of the Stock Purchase Agreement.[23]

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[20] This is subject, at certain thresholds, to Ericsson consent.

[21] *See* Stockholders Agreement § 5.6, attached as Exhibit 2.

[22] *Id*.

[23] *See* Stock Purchase Agreement § 4.8.

Francisco Partners is a skilled, institutional investor with a diversified portfolio of investments of over $4 billion of invested capital in 43 companies that does not raise any neutrality concerns. Francisco Partners' diversified and successful portfolio will bring affirmative benefits to iconectiv, including iconectiv's management of the LNPA. For example, the FP Investors' representative on iconectiv's Board will be able to draw on Francisco Partners's significant management expertise, which will give iconectiv access to valuable advice and expertise in performing its responsibilities relating to the LNPA. Although the Commission's neutrality inquiry is ultimately focused on iconectiv, not FP Investors, an examination of the interests held by either FP Investors or its parent, Francisco Partners, demonstrates that none of these investment interests will have any impact on iconectiv's neutrality.[24]

Francisco Partners' ownership interests in the telecommunications sector include investments in Mitel Networks Corporation ("Mitel"), which has a very small TSP business unit; and MetaSwitch Networks Ltd. ("MetaSwitch") and Procera Networks, Inc. ("Procera"), both of which sell some equipment to TSPs. Together, these investments make up a small proportion of Francisco Partners' overall portfolio: just 3 out of 43 active investments.

None of these relationships, alone or collectively, is sufficiently extensive or proximate to impact Francisco Partners' neutrality. Nor could they plausibly subject iconectiv to undue influence by parties with a vested interest in the outcome of numbering administration activities.

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[24] As explained in the *Warburg Transfer Order*, the Commission examines iconectiv's neutrality for LNPA regulatory purposes. *See Request of Lockheed Martin Corp. and Warburg, Pincus & Co. for Review of the Transfer of the Lockheed Martin Commc'ns Indus. Servs. Bus.*, 14 FCC Rcd 19,792, 19,807 ¶ 22 (1999) ("*Warburg Transfer Order*") (analyzing the neutrality of NeuStar, not its investor, Warburg, Pincus & Co.); *see also LNPA Selection Order* ¶ 170 (rejecting Neustar's "apparent position that the Commission must evaluate Ericsson's neutrality, rather than Telcordia's").

Indeed, the proposed transaction between FP Investors and iconectiv raises none of the concerns highlighted in the *Warburg Transfer Order*—where Warburg owned more than 10% in several TSPs, including a majority interest in one TSP—or the *LNPA Selection Order*—where the Commission stated, "Ericsson's managed services contracts and equipment sales revenues are worth considerably more than its bid for the LNPA contract, and so it is conceivable that Ericsson might be tempted to prioritize those contracts and sales over the LNPA contact."[25] Because none of those concerns are present here, the transaction between FP Investors and iconectiv will have no bearing on the Commission's conclusion that iconectiv meets the Commission's neutrality requirements.[26]

Mitel. Francisco Partners, through subsidiaries (the "Mitel Subsidiaries"), has an interest in Mitel, a publicly traded company. Mitel's TSP-related activities themselves represent a very small part of its operations. In fiscal year 2016, for example, Mitel's TSP revenues represented only a small portion (estimated at 2%, and no more than 5%) of its total revenues.[27]

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[25] *LNPA Selection Order* ¶ 181.

[26] *See LNPA Selection Order* ¶¶ 171, 181; 47 C.F.R. § 52.12(a)(1). Because none of these investments trigger the "objective, quantifiable measures" set forth in the Commission's rules, *see Warburg Transfer Order*, 14 FCC Rcd at 19,808 ¶ 24; 47 C.F.R. § 52.12(a)(1)(i)-(ii), the analysis presented herein focuses largely on the third criterion of the Commission's neutrality rules—i.e., whether the investment by FP Investors could subject iconectiv to undue influence.

[27] Mitel's operations are divided between its enterprise and cloud units. The former, which sells premises-based communications solutions to business customers, is irrelevant to the Commission's neutrality analysis because it neither "receives numbering resources from the NANPA" or a similar numbering provider nor offers a "telecommunications service." 47 C.F.R. § 52.5(e), (j). The latter, which sells both retail and wholesale cloud communications services, has a small portion (as noted above, estimated at 2% and no more than 5%) of 2016 revenues from the sale of TSP-related voice services.

Moreover, Francisco Partners' interest in Mitel is minor, owning just 5% of the common stock.[28] Thus, Francisco Partners' investment falls well below Section 52.12(a)(1)(i)(A)'s 10% test for affiliation through common control.[29] In contrast, Warburg's TSP investments represented approximately 12% of its invested assets, and included three TSP interests exceeding the Commission's 10% threshold (its ownership in TSPs was 50.6%, 20%, and 14%),[30] including control of one TSP. Francisco Partners' investment in Mitel, which does not exceed the 10% threshold, thus bears no resemblance to Warburg's extensive investments in TSPs.

Because Francisco Partners has a small stake in Mitel, and Mitel earns only *de minimis* revenue from TSP activities, there is no reason to conclude that this investment might provide FP Investors with an incentive to influence iconectiv in a way that might compromise its neutrality.

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28 Francisco Partners also manages an entity on behalf of third-party investors that owns 2% of the common stock.

29 47 C.F.R. § 52.12(a)(1)(i)(A). One representative of a Mitel Subsidiary also serves on Mitel's board of directors. In addition to being below the 10% threshold, this representation is not enough to constitute "affiliat[ion]" under Subsection (C) of 52.12(a)(1)(i) because Francisco Partners lacks "[t]he power to direct or cause the direction of the management and policies" of Mitel. And, even assuming iconectiv and Mitel could theoretically be "affiliated" through common control, the Mitel connection is too attenuated to actually influence iconectiv. Moreover, Commission regulation and precedent indicate that a clear lack of influence trumps any merely formal affiliation with a TSP. *See* 47 C.F.R. § 52.12(a)(1)(iii) (stating that, "[n]otwithstanding the neutrality criteria set forth in [Subsections 52.12(a)(1)(i) and (a)(1)(ii)]," a numbering administrator "may be determined to be or not to be subject to undue influence by parties with a vested interest in the outcome of numbering administration and activities"); *see also N. Am. Numbering Plan Administration NeuStar, Inc.*, 19 FCC Rcd 16,982, 16, 982 ¶ 2 (2004) (indicating that NeuStar could seek approval for "acquisition of equity interests in NeuStar by a . . . TSP affiliate").

30 In addition to falling below the 10 percent threshold where Warburg did not, Francisco Partners' Mitel investment is also smaller—in both absolute and relative terms—than the TSP investments that "concerned" the Commission in the *Warburg Transfer Order*. *Warburg Transfer Order* ¶¶ 8, 30 (noting that Warburg's TSP investments totaled approximately $780 million (in 1999 dollars) and that Warburg was likely to increase such investments). By contrast, Francisco Partners' investment in Mitel accounted for only 2.8% of Francisco Partners' invested capital as of the end of 2016.

MetaSwitch and Procera. Through subsidiaries (the "MetaSwitch Subsidiary" and the "Procera Subsidiary"), Francisco Partners holds interests in MetaSwitch[31] and Procera.[32] Neither MetaSwitch nor Procera is a TSP. MetaSwitch is a leading provider of cloud native communications software and develops software and hardware solutions for fixed and mobile communications providers. Procera is a hardware and software vendor that sells network intelligence and traffic management solutions to a wide range of customers. As with the Mitel investment, Francisco Partners' investments in MetaSwitch and Procera pose no concerns about iconectiv's neutrality.

Neither MetaSwitch nor Procera has a vested interest in the outcome of numbering administration and activities. MetaSwitch earns revenues from a diverse array of customers, with no single TSP representing more than 10% of MetaSwitch's 2016 revenue. Similarly, Procera's revenues from all TSPs is a small part of its overall revenues—approximately 7%. Thus, Procera's line of business is primarily directed to non-TSPs, and it has no interest in or dependency on TSPs. And Procera's TSP revenues, like MetaSwitch's, are balanced among TSPs. Moreover, MetaSwitch and Procera represent a relatively small portion of Francisco Partners' investments, 1.8% and 2.2%, respectively, as of the end of 2016.

In short, there is no risk that Francisco Partners' investments could create an incentive for it to exert undue influence over iconectiv. None exceed the 10% threshold for affiliation with a TSP; none rely significantly on numbering administration outcomes; and none represent a

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31 The MetaSwitch Subsidiary controls 42.5% of voting shares, 42.5% of preferred shares, and 34.5% of the fully-diluted common shares of MetaSwitch. Two representatives of the MetaSwitch Subsidiary also serve on MetaSwitch's Board of Directors.

32 Francisco Partners indirectly controls the voting shares of Procera through a subsidiary (the "Procera Subsidiary"). Two representatives of the Procera Subsidiary serve on Procera's Board of Directors.

significant investment for Francisco Partners in relation to its broader portfolio. Francisco Partners thus does not raise any neutrality concerns and the proposed transaction will enhance, not negatively impact, iconectiv's neutrality.

Indeed, going forward, FP Investors have contractually covenanted to maintain neutrality in the Stockholders Agreement. And, to ensure even further protections, if there were ever a concern about iconectiv's neutrality in the future due to FP's Investors' actions (which is unlikely), FP Investors and Ericsson have agreed to recuse themselves from deliberations on any matters related to the LNPA, subject to the minority shareholder protections reflected in the Voting Trust.

Finally, as described further in Part IV below, iconectiv's numerous neutrality safeguards—including the Code of Conduct, the Voting Trust Agreement, and the bi-annual audit—will also amply ensure that neutrality is upheld.

IV. THE COMMISSION SHOULD APPROVE THE PROPOSED MODIFICATIONS TO THE VOTING TRUST AND CODE OF CONDUCT AS PART OF A TRANSACTION THAT STRENGTHENS NEUTRALITY SAFEGUARDS.

The Commission should approve the proposed Modifications because they strengthen the safeguards ensuring iconectiv's neutrality and impartiality as the LNPA. Moreover, the addition of FP Investors as a minority owner with its own board representation increases the separation of iconectiv from Ericsson. As a result, the investment and proposed Modifications collectively bolster the protections against any potential undue influence on iconectiv from any particular segment of the telecommunications industry. Finally, as noted above, FP Investors will add significant value as a neutral, skilled minority shareholder. FP Investors' parent, Francisco Partners, has significant managerial experience developed over 17 years investing across a range of industries. Thus, Francisco Partners' strategic and operational expertise will improve the operations and management of iconectiv.

A. The Transaction Strengthens Neutrality Safeguards by Adding a Minority Shareholder.

The contemplated investment by FP Investors will further fortify the safeguards that the Commission put in place to ensure that iconectiv could not be subject to undue influence by Ericsson. The addition of a minority shareholder means that all of the directors owe duties to all of the stockholders, including non-Ericsson shareholders.[33] The Commission addressed just this situation when it approved Warburg's investment in Neustar, holding that "[t]he presence of unaffiliated directors and trustees, who owe fiduciary duties to parties other than Warburg with a paramount interest in ensuring NeuStar's neutrality, should ensure that NeuStar does not compromise its neutrality obligations."[34] Similarly, under the Amended Code of Conduct, the majority of the iconectiv Board will consist of non-Ericsson directors, who will owe fiduciary duties to parties other than Ericsson.

Indeed, the structure of the new iconectiv Board is even more protective than the structure of the Neustar Board approved in the *Warburg Transfer Order*. As a result of that decision, Warburg appointed two directors as its designees, out of five directors of the Neustar Board. Here, Ericsson will appoint only one of seven board members as its designee. The other directors will be three independent directors, two designees of FP Investors, and the iconectiv CEO. Thus, here there is even more reason to conclude that "the structure of the . . . Board and

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[33] *See* Del. Code Ann. tit. 8 § 141(a); *see also, e.g., Nine Systems Corp. S'holder Litig.*, No. 3940-VCN, 2014 WL 438127, at *36 (Del. Ch. Sept. 4, 2014) ("Directors owe fiduciary duties to *all* stockholders, not just a particular subset of stockholders.").

[34] *Request of Lockheed Martin Corp. and Warburg, Pincus & Co. for Review of the Transfer of the Lockheed Martin Communications Industry Services Business*, Order, 14 FCC Rcd. 19,792, 19,811 ¶ 32 (1999) ("*Warburg Transfer Order*").

the terms of the trust Agreement provide a strong basis for the directors and trustees to act independently and prevent any attempt [by Ericsson] to exercise improper influence."[35]

The addition of FP Investors as a minority shareholder thus also addresses an argument made by Neustar both to the Commission and to the D.C. Circuit: that under Delaware law iconectiv's directors owe a fiduciary duty to act in the interests of their sole shareholder, Ericsson, even when those interests would conflict with iconectiv's interests.[36] As iconectiv and the Commission have explained to the Court of Appeals, this argument is incorrect, because iconectiv's directors cannot have a fiduciary duty to violate iconectiv's legal obligations, including neutrality.[37] Nonetheless, this transaction moots that dispute, as iconectiv's directors would owe fiduciary duties to parties other than Ericsson.

B. The Proposed Amendments to the Voting Trust Agreement and Code to Enable Restructuring of iconectiv's Board of Directors Are Consistent with the Commission's Neutrality and Impartiality Requirements.

The proposed Voting Trust and Code of Conduct amendments are consistent with ensuring iconectiv's neutrality and impartiality. The Voting Trust and Code of Conduct were safeguards that the Commission incorporated into its *LNPA Selection Order* in order "to address any potential for undue influence by Ericsson."[38] As explained above, FP Investors are neutral and do not raise any undue influence concerns, and there is thus no need to focus safeguards on

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35 *Id*.

36 *E.g.*, *Number Portability et al.*, WC Docket No. 09-109, CC Docket No. 95-116, Comments of Neustar, Inc. at 28 (filed July 25, 2014); Brief for Petitioner at 30-33, *Neustar, Inc. v. FCC*, (D.C. Cir. 2015) (No. 15-1080).

37 *E.g.*, *Number Portability et al.*, WC Docket No. 09-109, CC Docket No. 95-116, Reply Comments of Telcordia Technologies, Inc., d/b/a iconectiv at 32-33 (filed Aug. 22, 2014); Brief for Respondents at 31-37, *Neustar, Inc. v. FCC*, (D.C. Cir. 2015) (No. 15-1080); Brief for Intervenors at 22-25, *Neustar, Inc. v. FCC*, (D.C. Cir. 2015) (No. 15-1080).

38 *LNPA Selection Order* ¶ 182.

any party other than Ericsson. Indeed, in the absence of the asserted potential for undue influence by Ericsson, there would have been no basis for the Voting Trust or Code of Conduct as a condition of the LNPA selection.[39]

The changes to the Code of Conduct § 7.a and Voting Trust § 1.2 to permit the addition of two FP Investor designees to the iconectiv Board strengthen the safeguards against any postulated Ericsson undue influence. Under the current Code of Conduct, Ericsson holds only one seat on the board, as against a majority of independent directors who, by definition, were not aligned with Ericsson and, pursuant to the Voting Trust, were subject to review and confirmation by a vote of the Voting Trustees. Under the proposed Amended Code of Conduct, Ericsson still will have only one designee, as against six directors independent of its interests. As such, Ericsson's influence will be even more diluted than under the current structure. Furthermore, all directors, including the FP Investor designees, must still be voted upon by the Voting Trustees, who must specifically review them for compliance with the neutrality requirements.[40]

In addition, by requiring a plurality of independent directors, there remains a majority (three independents plus the iconectiv CEO) whose only allegiance is to iconectiv. This is directly analogous to conditions applied to Neustar after Warburg acquired its interest, in which Warburg was limited to representation in 40% of the board seats (two of five) with the remainder

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[39] Prior to the investment of Warburg, Pincus & Co., no voting trust was employed with regard to the companies involved in the LNPA. After Warburg proposed to purchase the company performing LNPA duties at the time from Lockheed Martin, the parties submitted a plan to create a subsidiary controlled by a voting trust. *See Warburg Transfer Order* ¶ 9. The parties proposed the voting trust as a means to "remov[e] opportunities for Warburg to use its ownership interest in the NANPA to advantage any of Warburg's other telecommunications interests." *See Warburg Transfer Order* ¶ 9. No such concerns exist here.

[40] *See* Amended Code of Conduct § 7.b ("Each Member [of the iconectiv Board of Directors] shall be vetted for neutrality issues.");

occupied by a plurality of independent directors (two of five) plus the Neustar CEO.[41] Accordingly, there is Commission precedent for reducing the required number of independent directors from a majority of the Board to a plurality.[42] The case here is even clearer because the FP Investors designees also will be independent of Ericsson, and further, as previously noted, FP Investors is itself a neutral party.[43]

The changes to the Voting Trust that require the Voting Trustees to maintain the Board composition of three independent members, one Ericsson designee, two FP Investors designees and the iconectiv CEO entirely maintain the role of the Voting Trustees in ensuring compliance with neutrality requirements. Section 1.2 of the Amended Voting Trust specifically ensures that the Voting Trustees do not have to maintain this composition if they lack unqualified power to vote in a manner consistent with the neutrality requirements, or they are not presented with sufficient nominees. This provision only serves to ensure that the Voting Trustees do not reject director-nominees for reasons unrelated to neutrality compliance.

Finally, the Board of Director appointment provisions of the Stockholders Agreement place further limitations on Ericsson with respect to the selection of iconectiv directors than the current by-laws. Under the current by-laws, there is a nominating committee comprised of a majority of independent directors. This means that the current nominating committee is no smaller than the Ericsson director plus two independent directors. Under the Stockholders

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[41] *Warburg Transfer Order* ¶ 12; *see also North American Numbering Plan Administration Neustar, Inc. Request to Allow Certain Transactions Without Prior Commission Approval and to Transfer Ownership*, Order, 19 FCC Rcd. 16982, 16988 ¶ 13 (2004) ("*Neustar Ownership Order*").

[42] FP Investors' Special Voting Rights do not change this conclusion because FP Investors are neutral, and thus are not a target of the neutrality safeguards.

[43] *See* discussion *supra* Section III.

Agreement, Ericsson and all the then-serving independent directors designate the independent directors—similar to the current nominating committee—but the independent directors must also be acceptable to FP Investors, adding another check on any potential influence on the directors by Ericsson. The Voting Trustees continue to exercise Ericsson's vote with respect to iconectiv's Board of Directors. As such, these provisions strengthen the neutrality safeguards.

V. THE PROPOSED AMENDMENTS TO THE VOTING TRUST AGREEMENT NECESSARY TO IMPLEMENT MINORITY-SHAREHOLDER PROTECTIONS DO NOT AFFECT ICONECTIV'S NEUTRALITY OR IMPARTIALITY.

In addition to the Board structure changes discussed above, the parties propose to modify Section 1.3 of the Voting Trust, which enumerates those matters on which Ericsson may direct the Voting Trustees how to vote. Specifically, the changes would clarify that Section 1.3(b) permits Ericsson to direct the Voting Trustees with respect to the issuance of shares or rights to acquire iconectiv stock, including decisions to split, combine, or reclassify that stock. In addition, it would add the following enumerated categories of matters:

> (h) Any amendment to the Certificate of Incorporation or the Bylaws or other organization documents of Telcordia or any of its subsidiaries, *except if such amendment affects compliance with the Neutrality Requirements*, or the composition, selection or removal of the Board of Directors of the Telcordia or any subsidiary providing LNPA services;
>
> (i) Any non-compensatory agreement or arrangement with any stockholder, executive officer, director or any affiliates thereof, *except if such agreement or arrangement would violate the Neutrality Requirements*;
>
> (j) Any change to material accounting principles, policies or practices; or
>
> (k) The declaration or payment of any dividends or distributions on any capital stock of the Company.[44]

[44] Amended Voting Trust § 1.3(h)-(k) (emphases added).

These provisions are proposed to be added to facilitate the transaction. They enable Ericsson to assure FP Investors that Ericsson can provide stockholder's consent to the following matters for which Ericsson and FP Investors must specifically consent in writing, which did not already fall within another subsection of Voting Trust § 1.3:[45]

- amending the Certificate of Incorporation or the Bylaws or other organization documents of the Company or any of its Subsidiaries if such proposed amendment would adversely affect rights of the Stockholders as they exist on the Effective Date;
- splitting, combining, reclassifying, or otherwise similarly adjusting any Capital Stock;
- entering into any non-compensatory agreement or arrangement with any stockholder, executive officer, director or any Affiliates thereof (subject to certain exceptions);
- changing any material accounting principles, policies or practices except as consistent with law or International Financial Reporting Standards.

The changes also ensure that the parties can declare dividends as they deem reasonable.

As is evident from the text, the proposed changes to section 1.3 of the Voting Trust specifically safeguard the Voting Trustees' role of exercising independent discretion with respect to matters that implicate neutrality where it can reasonably be anticipated that neutrality could be an issue, such as changes to the composition, selection or removal of directors overseeing LNPA activities. With respect to other matters such as stock splits, changes in accounting principles, approving most interested party transactions and declaring dividends, these are unlikely to implicate neutrality issues. Indeed, two of the provisions have been categorically recognized by the Commission as customary protections for minority investors in limited partnerships and limited liability companies.[46]

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45 *See* Stockholders Agreement § 5.5.

46 *See* 47 U.S.C. § 1.993(c)(2) (preventing the execution of contracts between the entity and a partner or member); *id.* § 1.993(7) (preventing changes to the entity's organizing documents).

The changes to the Voting Trust to reflect these consent protections between two significant investors in a closely held company are reasonable, do not detract from the purpose of the Voting Trust in safeguarding against any undue influence by Ericsson, and thus should be approved.

VI. IF NECESSARY, THE COMMISSION SHOULD APPROVE FP INVESTOR'S MINORITY INVESTMENT, WHICH IS IN THE PUBLIC INTEREST.

It is not clear, based on the Commission's past precedent, whether the sale of a non-controlling interest in a numbering administrator will trigger prior approval, particularly where, as here, the transaction does not increase any interests of a telecommunications service provider or a telecommunications service provider affiliate in the LNPA.[47] Nonetheless, to the extent that Commission prior approval is required, the parties request that such consent be granted.

As discussed above, the transaction will further the public interest. The transaction strengthens neutrality protections by introducing a second significant shareholder into iconectiv's ownership and governance structure. It will also provide iconectiv with FP Investors' substantial managerial expertise. FP Investors will have a strong role in setting budgets and in overseeing the performance of executive officers, both before, but especially after the completion of the LNPA transition, when FP Investors' Special Voting Rights will be activated.

The transaction will not adversely affect iconectiv's ability to complete the LNPA transition on time. Indeed, FP Investors, as well as Ericsson, will have a substantial interest in seeing iconectiv begin full LNPA operations in May 2018.

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[47] *Neustar Ownership Order* ¶ 2.

VII. CONCLUSION

For the reasons stated above, the Commission should approve the proposed Modifications to the Code and to the Voting Trust agreement, and, if necessary, consent to FP Investors' minority investment and associated degree of control.

Respectfully submitted,

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